

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2738 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : YES  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BHAGUBHAI F SONI

Versus

UNION BANK OF INDIA  
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Appearance:

1. Special Civil Application No. 2738 of 2001  
MR AK CLERK for Petitioner No. 1  
MR KIRIT J MACWAN for Respondent No. 1  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/12/2001

ORAL JUDGEMENT

The observations made by the Hon'ble apex court  
in case of M.S. Grewal and another v. Deep Chand Sood and  
others reported in (2001) 8 SCC 151 are relevant and

material in light of the facts of the present case. The said observations are, therefore, reproduced as under:

'27. The decision of this Court in D.K. Basu v. State of W.B. comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits stands extended since Anand, J. (as His Lordship then was) in no uncertain terms observed: (SCC p. 439, para 45)

"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affection of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact, the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of 'judicial oriented approach'. Law courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice oriented approach ought not to be

thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.'

Heard learned advocate Mr. Clerk for the petitioner and Mr. Macwan for the respondent bank. In this petition, by order dated 18.4.2001, rule was issued by this court and it was made returnable on 4.9.2001. Meanwhile, the respondent was directed to file affidavit in reply on or before 21.7.2001. On behalf of the respondent bank, affidavit in reply has been filed by one Shri R.N. Joshi, Manager (Personnel), Zonal Office, Ahmedabad.

By way of this petition, the petitioner has challenged the denial of pension to the petitioner on the ground that the same is arbitrary, capricious, unreasonable, irrational, violative of the fundamental right of the petitioner under Article 14 and 16 of the Constitution. Brief facts of the present petition are to the effect that the petitioner herein had worked with the respondent bank for a period of more than 28 years. The petitioner was compulsorily retired from service by order dated 5.12.1986. Said order was challenged by the petitioner by filing special civil application no. 6982 of 1987 wherein consent terms were arrived at between the parties before this Court according to which the petitioner was treated to have voluntarily retired with effect from 5.12.1986. Thereafter, in the year 1995 and more particularly on 29.9.1995, the Union Bank of India (Employees) Pension Regulations, 1995 [hereinafter referred to as "the Regulations" for the sake of brevity] were brought in to force according to which, the employees who have retired on or after 1.11.1993 are entitled to pension. According to clause 2(y), 'retirement' includes retirement on voluntary retirement in accordance with the provisions contained in regulation 29 of the Regulations. According to the petitioner, by order dated 31.7.1990 passed in the aforesaid petition, the petitioner was treated to have retired voluntarily from service with effect from 5.12.1986 and, therefore, the petitioner is being denied pension on the ground that he has not voluntarily retired from the service on or after 1.11.1983 as per clause 3(2) of the Regulation. According to the petitioner, the petitioner was given the option Form for pension by letter of the bank dated 1.7.1994 and the petitioner submitted necessary forms opting for pension by letter dated 11.7.1994. Thereafter, since the case of the petitioner was not considered for pension, the petitioner again wrote letter

dated 7.12.1994 claiming pension. Thereafter, he again wrote letter dated 30.12.1994 claiming pension. Thereafter, the petitioner received a reply from the Manager, Department of Personnel, Pension Cell, the Central Office of the respondent bank dated 4.12.1995 stating that since the petitioner had retired from the service of the bank before 1.11.1993, he was not eligible for pension under the Scheme. Thereafter, a letter dated 12.2.1996 was written by the petitioner. According to the petitioner, the employees of the other banks like the Bank of India etc. had approached the High Court of Karnataka and the High Court of Karnataka has decided in favour of the employees. Thereupon, the bank had approached the Hon'ble Supreme Court against the judgment of the Karnataka High Court and in the case of Bank of India versus Indu Rajgopalan 2000-I-LLJ-1617, the Hon'ble Supreme Court dismissed the appeal of the bank holding that the employees were voluntarily retired between 1.1.1986 and 31.10.1993 are also entitled to pensionary benefits. According to the petitioner, pension scheme of the bank which were before the Supreme Court and the respondent bank is identical and, therefore, the petitioner is also entitled to pension. The petitioner thereafter wrote a letter to the bank on 8.8.2000 claiming pension. The petitioner was informed by the bank by letter dated 26.8.2000 that the matter was taken up with the Zonal Office. Thereafter, the respondent bank has informed the petitioner on 20.9.2000 informing that as per the settlement between the bank and the petitioner, the petitioner was eligible for voluntary retirement pension as per the judgment of the Hon'ble Supreme Court but the bank was considering the eligibility of the petitioner for pension in view of the condition of settlement. Thereafter, the petitioner made a representation dated 18.11.2000 and then, the petitioner received reply dated 17.1.2001 that in view of the consent terms dated 31.7.1990, the petitioner is not entitled to pension. The petitioner has, therefore, approached this Court by way of this petition challenging the action of the respondent in denying pension to him.

During the course of hearing, learned advocate Mr. Clerk has submitted that by letter dated 20.9.2000, the respondent bank had agreed to the effect that the petitioner has become eligible for voluntary retirement pension as per the latest apex court decision in this regard. He has submitted that however, in order to find out the eligibility for the same in light of various service conditions mentioned in the settlement, the respondent bank required legal opinion and thereafter by letter dated 17.1.2001, the bank has raised one

contention for denying the pension to the petitioner that since the petitioner has waived his right for claiming pension in terms of the settlement arrived at between the parties in the earlier petition before this Court, the petitioner is not entitled to claim any amount of pension under the Scheme and on that sole ground, his claim for pension was rejected by the respondent bank. He has relied upon the decision of the apex court in case of Bank of India and Indu Rajagopalan and Others reported in 2000-I-LLJ page 1617 and has submitted that in the said decision, the apex court has observed that the retirement includes voluntary retirement and the employees who retired after January 1, 1986 are also covered by the Pension Scheme framed in the bank with effect from November, 1993. In the said matter before the Hon'ble Supreme Court, petition from the employees was allowed by the High Court and the decision of the High Court was upheld on an appeal preferred by the bank. He has also relied upon the another decision of the apex court in case of Associated Hotels of India Ltd. versus S.B. Sardar Ranjit Singh reported in AIR 1968 SC 933 wherein the Hon'ble apex court has considered the principles of waiver and has observed that a waiver is an intentional relinquishment of a known right; there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. Relying upon this decision of the Hon'ble apex court, he has submitted that it is undisputed fact between the parties that pursuant to the settlement arrived at between the parties before this Hon'ble Court in earlier petition on 31.7.1990, the petitioner was treated to have retired voluntarily with effect from 5.12.1986 instead of compulsory retirement. He has submitted that at that point of time, neither the petitioner nor the respondent bank were aware of this legal right because the Scheme was not in existence; the scheme came into effect only from 29.9.1995 and, therefore, at that point of time, the petitioner was not aware of his legal right and such legal right had not accrued in his favour at that point of time. He has then submitted that when the right accrued in terms of the Regulations which was made applicable to all the employees who have voluntarily retired after 1st January, 1986 and, therefore, when the order of compulsory retirement has been treated as voluntary retirement with effect from 5th December, 1986, in view of that, the petitioner is entitled to have the benefit of the pension scheme which has been denied without any justification to the petitioner. He has submitted that at one occasion, by letter dated 20th September, 2000, the respondent bank has accepted

eligibility of the petitioner for voluntary retirement but subsequently, on the ground of waiver, such legally accrued right has been denied. According to Mr. Clerk, in view of these facts and also in view of the principles laid down by the apex court in case of Associated Hotels Ltd. (supra), the petitioner is entitled to pensionary benefits under the Scheme of 1995 and he has further submitted that the petitioner has received the amount of provident fund from the respondent bank and there is specific provision under the scheme that in such circumstances, while calculating the pensionary benefits under the Scheme of 1995, whatever amount has been received by the employee for the period between 1.1.1986 to 1.11.1993, said amount is required to be adjusted against the pensionary benefit and in case if any more amount is required to be paid by the employee, same can be adjusted by the employer - bank. Such formula has already been prescribed under the Rules. However, he has made it clear before this Court that though the petitioner has already received the amount of provident fund from the bank, same can be adjusted while calculating the pensionary benefits of the petitioner and in case if anything more is required to be paid, then, the petitioner is ready and willing to pay and/or deposit before the respondent bank without raising any objection. He has, therefore, submitted that the respondent bank may be directed to grant pensionary benefits to the petitioner accordingly while declaring that the denial of pension by the respondent bank on the ground of waiver is not legal and valid.

As against that, learned advocate Mr. K.J. Macwan appearing for the respondent bank has raised the contention in terms of the contentions 4 of the affidavit in reply that in terms of para 2 and 3, an offer to permit him to retire voluntarily with effect from the date on which his services were terminated by way of compulsory retirement has come from the petitioner and not from the bank. According to him, it was the respondent bank who has accepted the offer of the petitioner and not the vice versa. According to him, in terms of para 6, the settlement agreed by and between the parties was a full and final settlement towards all rights and claims and dispute of the petitioner against the respondent bank including that of reinstatement, backwages etc. as have been raised in the petition or otherwise. In view of that, he has submitted that it is crystallized that no future claims existing, nonexisting or coming to the existence in future can survive in favour of the petitioner or against the respondent bank. He has also clarified that in view of the said

settlement, the petitioner has given up all his rights, claims, disputes etc. and there remains no rights and/or claims and/or disputes of the petitioner against the bank and if there is any, same shall be deemed to have been waived by the petitioner. He has further submitted that after extinguishing and waiving all rights, claims, disputes either past, present or future, it does not lie in the mouth of the petitioner to claim for the pension which has come into existence by way of the Regulation of 1995 after eleven years of his compulsory/voluntary retirement. According to him, whatever was due to the petitioner on his compulsory/voluntary retirement in terms of the Union Bank of India Officers Regulations, 1980 or otherwise has been paid to the petitioner which included his provident fund (including the contribution from the employer of Rs.47,000/-), gratuity, encashment of leave (106 days) which was payable at the time of signing the consent terms agreement before this Court. He has further submitted that the respondent bank has, by virtue of the Pension Regulations, introduced the pension scheme in lieu of the Contributory Provident Fund Scheme of which the petitioner was a member. According to him, in accordance with the benefits of the Contributory Provident Fund Scheme, the petitioner has already accepted the contribution of the employer bank and, therefore, on conclusion of full and final settlement in terms of the said consent terms agreed before this Court, the petitioner is not entitled to claim for pension in terms of Pension Regulations after 11 years. Learned advocate Mr. Macwan has contended that according to the Pension Regulation 29 of the Regulations, an employee is entitled to pensionary benefits who has retired voluntarily on or after 1st November, 1993 but now this contention is not available to the bank as per the decision of the apex court wherein the apex court has held that the pensionary benefits are available to the employees who has retired between 1st January, 1986 to 30th October, 1993. However, learned advocate Mr. Macwan has also raised one contention that if the respondent bank would have been aware about this right of the petitioner which accrued in future, then, the respondent bank would have not entered into such settlement with the petitioner and in that eventuality, the bank would not have agreed to treat the order of compulsory retirement into that of voluntary retirement by entering into the settlement before this Court. He has submitted that since the petitioner was agreeing before this Court for not claiming any amount or not to raise any dispute in respect of the service condition, the bank has agreed. According to him, since the petitioner has waived all such rights while entering the

settlement before this Court in the earlier petition, the petitioner is estopped from claiming such rights as per the principles of waiver. He has also made it clear that the decision of the Hon'ble Supreme Court in case of Bank of India reported in 2000(1) L.L.J. 1617 is also not squarely applicable to the present case on facts and, therefore, according to him, the petitioner is not entitled to any of the reliefs prayed for in this petition and, therefore, this petition is required to be dismissed with costs.

I have considered the submissions made by the learned advocates for the parties. I have considered the averments made in the memo of petition as well as the averments made by the deponent in the affidavit in reply filed on behalf of the respondent bank. The question is that in light of these facts and also considering the terms of the settlement dated 31st July, 1990 in special civil application no. 6982 of 1987, whether the petitioner is entitled to pensionary benefits under the Pension Regulations, 1995 and whether the action of the respondent in denying such pensionary benefits to the petitioner on the ground of waiver is legal or not.

I have perused the terms of settlement. Item No. 2 and 3 of the said Settlement read as under :

"2. That the petitioner thereafter made an offer to the respondent bank that he may be permitted to voluntarily retire with effect from the date on which his services were terminated by way of compulsory retirement order passed by the respondent bank.

3. That the said offer of the petitioner has been accepted by the bank and now it has been agreed upon by and between the parties that in view of the present settlement the petitioner shall stand voluntarily retired and shall be deemed to have voluntarily retired with effect from 5th December, 1986 i.e. from the date of the order of compulsory retirement passed against him."

Item No. 6 of the said settlement reads as under:

"6. It is also agreed upon by and between the parties that the present settlement is full and final settlement towards all rights and claims and disputes of the petitioner against the

respondent bank including that of reinstatement, back wages etc. as have been raised in the petition and even otherwise. In view of present settlement, the petitioner gives up all his rights, claims, disputes etc. and there remains no rights and/or claims and/or dispute of the petitioner against the respondent bank and if there is any, the same shall be deemed to have been waived. "

In light of these terms of the settlement, the question is that at the relevant time when the parties had entered into settlement in the petition before this Court on 31st July, 1990, whether the petitioner was having any legal right to receive pensionary benefit or not. If the right was not in existence at the relevant point of time, then, the question of waiving such right does not arise. Pension Regulations, 1995 came into force with effect from 29th September, 1995 and from that day onward, the petitioner was having legal right to be entitled for pension and therefore, whatever commitment made by the petitioner in view of the settlement not to claim any right not to raise any dispute before the respondent bank considering legal right whatever available at the relevant time on 31st July, 1990 and therefore, it is clear that at the time of entering into the settlement on 31st July, 1990, the petitioner was not at all aware of such pension regulation nor was aware about such pensionary rights and benefits available under such regulation and, therefore, according to my opinion, considering the view taken by the apex court in case of Associated Hotels of India Ltd. versus SB Sardar Sing, AIR 1968 SC 933, the plea of waiver of such right would not be available to the respondent bank. In para 14 of the said decision, the apex court has observed as under :

"14. It is argued that the respondent waived the requirement of consent to the sub-letting. Any sub-letting in breach of the provisions of Cl.(b) of the proviso to S. 13(1) is an offence punishable under S. 44. Assuming that the landlord can waive the requirement as to consent, it is not shown that the respondent waived it. A waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. See Dhanukdhari Singh v. Nathima Sahu, (1907) 7 Cal WN 848 at p. 852. It is said that the respondent knew of the

sub lettings as he frequently visited the hotel. It appears that he visited the hotel upto 1953 and he must have known of the occupation of R.N. Kapoor Indian Art. Emporium and Pan American World Airways But he came to know of the other lettings in January 1958 only. Moreover, the precise nature of the grant was never communicated to the respondent. The Courts below rightly held that the respondent did not waive his right to evict the appellant on the grounds mentioned in Cls. (b) and (c) of the proviso to S. 13(1)."

Thus, as per the decision of the apex court in case of Associated Hotels of India (supra), waiver is an intentional relinquishment of a known right. Here, as per the facts of the present case, right of pensionary benefits was not known to the petitioner at the relevant time. The petitioner was not having knowledge of such pensionary rights and, therefore, there can be no waiver against the petitioner. The decision of the apex court would, therefore, be applicable to the facts of the present case without any change. Therefore considering the said observations of the decision of the Hon'ble apex court in light of the facts of the present case, it can be said that it was not an intentional relinquishment of a known right of the petitioner. It is also necessary to note that at the relevant time, the petitioner was not having any knowledge of his right and, therefore, no decision has been taken by the petitioner for waiving his pensionary right against the respondent bank and, therefore, there was no effective action on the part of the petitioner in absence of full knowledge of his right and, therefore, according to my opinion, petitioner has not waived his legal right to receive pension from the respondents. Therefore, it cannot be said that the petitioner has waived his legal right to receive pension.

It is also necessary to note that while treating compulsory retirement in voluntary retirement, the purpose behind it was that the employee gets all the normal retirement benefits on the basis of the service conditions applicable to the bank and, therefore, there was no purpose while entering into settlement to deny any retirement benefit for which the petitioner was otherwise entitled in accordance with the service regulations of the respondent bank. Therefore, considering this aspect, according to my opinion, the contention raised by the respondent bank that the petitioner has already relinquished his legal right of pension while entering into settlement dated 31.7.1990 is not correct and it

cannot be said that the petitioner has waived any such right.

It is also required to be considered that the pension scheme has been introduced by the respondent bank in lieu of the Contributory Provident Fund which was in existence in the respondent bank prior to the introduction of the pension scheme and, therefore, ultimately, instead of paying the contribution in the provident fund to an employee at the time of his retirement, pension is being paid in place of such provident fund and in the instant case also, though the petitioner has received the amount of provident fund as there was no pension scheme available at that time, therefore, if it is considered that the respondent bank is agreeable to give pensionary benefit to the petitioner, then, the amount already received by the petitioner towards the provident fund can be adjusted against such pensionary benefit in accordance with rules.

Recently, in case of Gorakhpur University and others versus Dr. Shitla Prasad Nagendra and others reported in 2001 AIR SCW 2819, the apex court has observed as under :

"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest."

Therefore, in view of the aforesaid decision of the apex court, since the petitioner has been treated to have retired voluntarily from the respondent bank and when it was agreed by the respondent bank, then, as a matter of right, the petitioner is entitled to claim and receive pension and pensionary benefits from the respondent bank under the Scheme of 1995 and, therefore, according to my opinion, the action of the respondent bank in denying such benefits to the petitioner only on the ground of waiver is not correct and legal and contrary to the Pension Regulations, 1995 and, therefore, this petition is required to be allowed accordingly.

For the reasons recorded hereinabove, this petition is allowed. It is held that the petitioner is entitled to all the pensionary benefits with effect from

5th December, 1986 under the Union Bank of India Employees Pension Regulations, 1995 as amended from time to time. It is directed to the petitioner to complete all the necessary formalities as are required to be completed by the petitioner under the Pension Regulations, 1995 within one month from the date of receipt of copy of this judgment. As and when such formalities are completed by the petitioner and after the necessary application with all other relevant documents are received by the respondent bank from the petitioner, it is directed to the respondent bank to calculate the pensionary benefits of the petitioner with effect from 5.12.1986, within two months from the date of receipt of such application from the petitioner. After calculation of pensionary benefits of the petitioner as directed hereinabove, it is directed to the respondent bank to adjust the amount of provident fund which was paid to the petitioner as per the formula adopted under the Pension Regulations, 1995 and after adjusting such amount of provident fund of the petitioner, if any more amount is required to be paid to the petitioner by the respondent bank, same shall be paid by the respondent bank to the petitioner within one month from the date of finalization of the pension of the petitioner. However, it is clarified that after the adjustment of the provident fund amount of the petitioner, if any more amount is required to be paid by the petitioner to the respondent bank, same shall be paid by the petitioner within two months from the date of receipt of such intimation from the respondent bank in that regard. However, the respondent bank is directed not to withhold any payment of pension only on the ground that such amount has not been paid by the petitioner to the respondent bank. After the pension of the petitioner is finalized, it is directed to the respondent bank to pay the pensionary benefits to the petitioner regularly in accordance with the Pension Regulations, 1995. Rule is made absolute accordingly. There shall be no order as to costs.

13.12.2001.

(H.K. Rathod, J.)

Vyas